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No. 74-54

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

TRANSAMERICAN FREIGHT LINES, INC.,
Petitioner,

v.

BRADA MILLER FREIGHT SYSTEMS, INC., et al.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF PETITIONER ON THE MERITS

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TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Statutes and Regulations Involved	2
Question Presented for Review	5
Statement of the Case	5
Summary of Argument	9
Argument	10
Conclusion	18
Appendix—Lease Agreement	A-1

TABLE OF AUTHORITIES

Cases

Alford v. Major (7th Cir. 1972), 470 F.2d 132 ..... 12, 13, 14

Allstate Insurance Company v. Alterman Transport Lines, Inc. (5th Cir. 1972), 465 F.2d 710 ..... 10, 12, 13

American Trucking Associations v. United States, 344 U.S. 298 15

Baltimore and Ohio Southwestern Railway Company v. Voigt, 176 U.S. 498 ..... 13, 14

Bowles v. Seminole Rock and Sand Company, 325 U.S. 410 16

Carolina Freight Carriers Corporation v. Pitt County Transportation Company (4th Cir. 1974), 492 F.2d 243 (Petition for a Writ of Certiorari Pending in this Court No. 73-1750) 10, 12, 13, 16

Chicago R. I. & P. R. Co. v. Chicago B. & Q. R. Co. (7th Cir. 1971), 437 F.2d 6 14

General Express, Inc. v. Schreiber Freight Lines, Inc., 377 F.Supp. 1159 ..... 13, 14

Jones Truck Lines, Inc. v. Ryder Truck Lines, Inc. (6th Cir. 1974), 507 F.2d 100 (Petition for a Writ of Certiorari Pending in this Court No. 74-973) 10, 12, 16

Perine v. William Norton Company, Inc. (2nd Cir. 1974), 509 F.2d 114 17

Sandra Wear v. Brada Miller Freight Systems, Inc. (7th Cir. 1974), Not Reported (Appendix B, A. 6 Petition for a Writ of Certiorari) 1, 2

Statutes

Interstate Commerce Act

Section 304(e), 49 U.S.C. Section 304(e) 2

Judiciary and Judicial Procedure

Section 1254(1), 28 U.S.C. Section 1254(1) 2

Section 2101(c), 28 U.S.C. Section 2101(c) 2

Regulations

Interstate Commerce Commission Regulations

Section 1057.3(a), 49 C.F.R. Section 1057.3(a) 3, 9, 10

Section 1057.4(a)(4), 49 C.F.R. Section 1057.4(a)(4) 4, 11, 12

Section 1057.4(c), 49 C.F.R. Section 1057.4(c) 11

Section 1057.4(d), 49 C.F.R. Section 1057.4(d) 11

Miscellaneous

Memorandum for the United States and the Interstate Commerce Commission as Amici Curiae filed in the instant case 10, 17

Reports of Interstate Commerce Commission Proceedings; Ex Parte No. MC-43; 51 M.C.C. 461; 52 M.C.C. 675; 64 M.C.C. 361; 68 M.C.C. 553 15

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OPINIONS BELOW

The Opinion of the District Court for the Southern District of Illinois, Southern Division, in *Sandra Wear v. Brada Miller Freight Systems, Inc., and Transamerican Freight Lines, Inc.*, Civil Action Number 4289, is not reported. A true copy of the same and of the Order of that Court entered in conjunction with its Opinion are contained in the Appendix to the Petition for a Writ of Certiorari in this case commencing on page A-1.

The Opinion of the United States Court of Appeals for the Seventh Circuit in *Sandra Wear v. Transamerican Freight Lines,*

Inc., Defendant-Appellant and Brada Miller Freight Systems, Inc., Defendant-Appellee, Number 73-1773, is not reported (decision at 497 F2d 926). A true copy of that Opinion is contained in the Appendix to the Petition for a Writ of Certiorari in this case commencing on page A-6.

JURISDICTION

Transamerican Freight Lines, Inc., appealed this case to the United States Court of Appeals for the Seventh Circuit from an Order of the District Court granting a Motion for Summary Judgment to Brada Miller Freight Systems, Inc., on Transamerican's Cross-Claim against Brada. The decision of the Court of Appeals affirmed the Order of the District Court granting summary judgment. The United States Court of Appeals for the Seventh Circuit entered its decision in the case of *Sandra Wear v. Brada Miller Freight Systems, Inc., et al.*, 497 F2d 926, on May 6, 1974. The Petition for a Writ of Certiorari in this case was filed on August 2, 1974, which was within ninety days of the entry of such judgment pursuant to 28 U.S.C. Section 2101 (c).

The jurisdiction of this Court to review the judgment and decision in this case by writ of certiorai is conferred by 28 U.S.C. Section 1254 (1).

STATUTES AND REGULATIONS INVOLVED

Statutes:

Interstate Commerce Act:

Section 304(e), 49 U.S.C. Section 304(e):

(e) Subject to the provisions of subsection (f) of this section, the Commission is authorized to prescribe, with respect to the use by motor carriers (under leases, con-

tracts, or other arrangements) of motor vehicles not owned by them, in the furnishing of transportation of property—

(1) regulations requiring that any such lease, contract, or other arrangement shall be in writing and be signed by the parties thereto, shall specify the period during which it is to be in effect, and shall specify the compensation to be paid by the motor carrier, and requiring that during the entire period of any such lease, contract, or other arrangement a copy thereof shall be carried in each motor vehicle covered thereby; and

(2) such other regulations as may be reasonably necessary in order to assure that while motor vehicles are being so used the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof in accordance with applicable law and regulations, as if they were the owners of such vehicles, including the requirements prescribed by or under the provisions of this chapter with respect to safety of operation and equipment and inspection thereof, which requirements may include but shall not be limited to promulgation of regulations requiring liability and cargo insurance covering all such equipment.

Vol. 10, United States Code (1970 ed.), pp. 11942.

Regulations:

Interstate Commerce Commission Regulations:

Section 1057.3(a), 49 C.F.R. Section 1057.3(a):

The provisions of Section 1057.4, except paragraphs (c) and (d), relative to inspection and identification of equipment, shall not apply:

(a) *Equipment used in the direction of a point which lessor is authorized to serve.* To equipment owned or held under a lease of 30 days or more by an authorized carrier and regularly used by it in the service authorized, and leased by it to another authorized carrier for transportation in the direction of a point which lessor is authorized to serve: *Provided*, That the two carriers have first agreed in writing that control and responsibility for the operation of the equipment shall be that of the lessee from the time the equipment passes the inspection required to be made by lessee or its representative under Section 1057.4(c) until such time as the lessor or its representative shall give to the lessee or its representative a receipt specifically identifying the equipment and stating the date and the time of day possession thereof is retaken or until such time as the required inspection is completed by another authorized carrier taking possession of the equipment in an interchange of equipment where such use is contemplated, such writing to be signed by the parties or their duly authorized regular employees or agents, and a copy thereof carried in the equipment while the equipment is in the possession of the lessee.

Title 49, Code of Federal Regulations, Chapter 10, Part 1057, Volume effective 10-1-73, Published by Office of Federal Register, G.S.A. p. 138.

Section 1057.4(a)(4), 49 C.F.R. Section 1057.4 (a)(4):

Other than equipment exchanged between motor common carriers in interchange service as defined in Section 1057.5, authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:

(a) *Contract requirements.* The contract, lease, or other agreement for the use of such equipment:

(4) *Exclusive possession and responsibilities.* Shall provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of said contract, lease or other arrangement, except: (exceptions not pertinent.)

Title 49, Code of Federal Regulations, Chapter 10, Part 1057, Volume effective 10-1-73, Published by Office of Federal Register, G.S.A. pp. 138 and 139.

QUESTIONS PRESENTED FOR REVIEW

In a case involving an agreement between two motor carriers for the lease of a tractor and trailer from one carrier to the other for a single trip, where the lease complies with the I.C.C. regulations and where the lessee assumes control and responsibility for the tractor and trailer involved according to I.C.C. regulations, is an indemnity clause in this otherwise valid lease invalid as against public policy and in circumvention of the I.C.C. regulations, or is this indemnity clause a valid exercise of the right of the parties to freedom of contract.

STATEMENT OF THE CASE

This case was originally instituted by Sandra Wear to recover damages for injuries she received in a truck-car collision on January 22, 1968. She filed her action against Brada Miller Freight Systems, Inc. (hereafter Brada), and Transamerican Freight Lines, Inc. (hereafter Transamerican), which defendants then cross-claimed against each other. Ultimately plaintiff dismissed her case against Brada and proceeded to trial against Transamerican during the course of which trial plaintiff and Transamerican effectuated a settlement of plaintiff's case. Thereafter Transamerican amended its cross-claim against Brada to

plead the settlement and by the cross-claim sought recovery from Brada of the amount of the settlement plus expenses by virtue of an indemnification clause in a truck lease agreement between Brada (lessor) and Transamerican (lessee) (A. 4-8).

For our purposes, the story starts January 19, 1968, at which time a lease agreement was entered into by which Brada leased a tractor and trailer to Transamerican for a single trip from Detroit, Michigan to Kansas City, Missouri. It was represented by Brada in the lease that this was a trip in the direction of a point which Brada was authorized to serve. Additionally, the lease provided that Transamerican, during the term of the lease, should have control and responsibility for the operation of the leased equipment. The vehicle was operated during the term of the lease by Howard Hardrick, a full-time driver and employee of Brada. Hardrick was furnished by Brada to Transamerican for the term of the lease although continuing as Brada's employee. (See Lease Agreement between the parties, A. 16, Exhibit 3 to Affidavit of Donavon F. Rayl and A. 89, Exhibit 1 to Deposition of Ronald Temperley. The terms of this lease agreement are set forth in full as an appendix to this brief, omitting only descriptive material and signatures.)

During the course of the trip which is the subject of this lease agreement, there was a collision near Smithboro, Illinois between the equipment covered by the lease and an automobile operated by Sandra Wear. Thereafter Sandra Wear filed her law suit claiming damages for injuries which she alleged resulted from the negligence of the driver of the leased tractor-trailer unit (A. 5, 6).

Paragraph 4 of the lease agreement stated "It is mutually understood and agreed, that (Transamercian) during the term of this lease shall have the control and responsibility for the operation of said equipment in respect to the public, shippers and Interstate Commerce Commission for such period that said

equipment is operated under the terms of this lease as provided in paragraph 1 hereof." (A. 16, 89 and Appendix to Petitioner's Brief A. 3).

Transamerican had the equipment involved inspected before the trip in question and completed the vehicle inspection report required by the I.C.C. (A. 66-67, Temperley Deposition Exhibit 2, A. 89). The driver, Hardrick, furnished Transamerican with driver's daily logs required by I.C.C. regulations which showed Transamerican as the carrier (A. 68-73, Temperley Deposition Exhibit 4-7, A. 89). The accident in question was reported to Transamerican (A. 73, Temperley Deposition Exhibit 8, A. 89). The driver, Hardrick, was instructed to follow certificated routes only and was supplied with a copy of Transamerican's I.C.C. authority showing these routes. Transamerican advanced money to the driver to cover his expenses for fuel, lodging, food and emergencies (A. 81-82, Temperley Deposition Exhibit 10, A. 89).

At the time of the accident the leased equipment was being operated from Detroit to Kansas City under authority granted Transamerican by the I.C.C. and during the trip there was a placard affixed to the side of the tractor stating "Operated by Transamerican Freight Lines, Detroit, Michigan" and showing Transamerican's I.C.C. number (A. 55-58, 63). Transamerican reported the accident to the I.C.C. on the appropriate I.C.C. form (A. 94-96).

Transamerican, in fact, paid the sum of $80,000.00 to settle the claim of the injured Sandra Wear (A. 7).

Paragraph 9 of the lease agreement provides "It is mutually understood and agreed by and between the parties hereto that (Transamerican) shall not be responsible to (Brada), its agents, servants and employees, for any negligence of (Brada), its agents, servants or employees, or for any loss, damage, injury or expense arising out of the failure of (Brada) to carry out the terms

of this Agreement. (Brada) hereby agrees to indemnify and save harmless (Transamerican) from any and all claims, suits, losses, fines or other expenses arising out of, based upon or incurred because of injury to any person or persons, or damage to property sustained or which may be alleged to have been sustained by reason of any negligence or alleged negligence on the part of (Brada), its agents, servants or employees, and for any loss or damage to cargo resulting from any negligence or unlawful act of (Brada), his agents, servants and employees. It is mutually understood and agreed that (Brada) will defend, at his own expense and cost, any and all suits that may be brought against (Transamerican) for injuries sustained, including death resulting therefrom, or damage to property caused or alleged to have been caused by the negligence of any person employed by (Brada), while engaged in the performance of any of the work required by the terms and conditions of this Agreement, and for any cargo loss sustained from any negligence or unlawful act on the part of (Brada), his agents, servants and employees. Nothing in this paragraph 9 contained shall be construed to in anywise limit the liability of (Transamerican) to the public in connection with the use of said equipment under this Agreement." (A. 5, Appendix to Petitioner's Brief, A. 5-6).

Paragraph 3 of the lease agreement provides that the equipment which is the subject of the lease is to be operated only by an employee of Brada (A. 16, 96, Appendix to Petitioner's Brief A. 3).

As stated, this case has reached its present posture following the decision of Brada's Motion for Summary Judgment. There are certain underlying factual disputes between the parties which will ultimately require a trial on the merits; however, the only issue in Brada's motion is the claim that the indemnity provision in the lease agreement is contrary to public policy. For the consideration of this issue, the relevant facts necessary to this decision are undisputed (A. 90-97).

SUMMARY OF ARGUMENT

A lease agreement has been entered into whereby Brada as lessor has leased tractor and trailer to Transamerican for a trip from Detroit, Michigan to Kansas City, Missouri with the equipment to be operated by a driver who was Brada's employee. Regulations of the Interstate Commerce Commission provide that the parties to such a lease must agree "in writing that control and responsibility for the operation of the equipment shall be that of the lessee * * *". (49 C.F.R. 1057.3 (a)). The terms of the lease agreement between Transamerican and Brada conform to the provisions of the I.C.C. regulations. The actual procedures followed by Transamerican in carrying out the terms of the lease conform to the provisions of the I.C.C. regulations. Included in the provisions of the lease agreement is a clause which provides that the lessor, Brada, will indemnify the lessee, Transamerican, from losses arising from negligence of the lessor or its employees (the lease provides that the driver is an employee of the lessor).

The I.C.C. regulations make no reference to indemnify agreements between lessor and lessee and therefore do not specifically prohibit such agreements. The control and responsibility requirements of the regulations have been fully met in this case both in law and in fact. There is no contention of any violation by Transamerican of any of the provisions of the regulations.

It is Transamerican's position that under the facts and circumstances set forth here the indemnity clause in the lease agreement does not in and of itself circumvent or contravene the intent or pourpose of the control and responsibility provisions of the regulations and is not against public policy. To the contrary, public policy supports the right of parties to freely contract between themselves as to such matters.

ARGUMENT

The United States Court of Appeals for the Seventh Circuit in deciding the present case, has ruled that even where there was otherwise complete compliance by the lessee Transamerican with the regulations of the Interstate Commerce Commission, "the indemnity clause itself circumvents the regulations". (See Appendix to Petition for a Writ of Certiorari pp. A-12) This decision is contrary to decisions of the United States Courts of Appeals for the Fourth, Fifth and Sixth Circuits on the same subject and in fact is contrary to the belief of the Commission itself as to the meaning and intent of its regulations. (See *Carolina Freight Carriers Corporation v. Pitt County Transportation Company*, (4th Circ. 1974), 492 F.2d 243, Petition for a Writ of Certiorari pending in this Court, No. 73-1750; *Allstate Insurance Company v. Alterman Transport Lines, Inc.*, (5th Circ. 1972), 465 F.2d 710; *Jones Truck Lines, Inc. v. Ryder Truck Lines, Inc.*, (6th Circ. 1974), 507 F.2d 100, Petition for a Writ of Certiorari pending in this Court, No. 74-973; Memorandum for the United States and the Interstate Commerce Commission as Amici Curiae filed in the present case, point No. 3, pages 5 and 6).

Regulations

The lease in our present case was between two authorized carriers as described by Section 1057.3(a) of the Interstate Commerce Commission Regulations. This section states in part that the carriers who are parties to the lease of equipment must agree "in writing that control and responsibility for the operation of the equipment shall be that of the lessee * * *". 49 C.F.R. 1057.3(a). Certain other types of equipment leases which involve the same issues are required by the Commission Regulations to provide for "the exclusive possession, control and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee * * *". 49 C.F.R. 1057.4 (a)(4).[1]

Additional provisions of the regulations applicable to our present lease are found in 49 C.F.R. 1057.4(c) and (d). These sections require detailed safety inspection of the equipment by the lessee and identification of the equipment during the term of the lease as being operated by the lessee. The language of these provisions is not relevant to the issues of this case and it is conceded that Transamerican fully performed its duties under each of these regulations.

Transamerican Compliance With Regulations

Paragraph 4 of the Lease Agreement in this case does provide that control and responsibility for the operation of the equipment shall be with Transamerican.

The facts set forth in the Statement portion of this brief and contained in the Opinion of the Seventh Circuit show that Transamerican in fact exercised actual control. The control by Transamerican is conceded by Brada. The facts of the present litigation are irrefutable testimony as to the responsibility element since these facts show that the injured third party has long ago been paid for her injuries *by Transamerican*. Transamerican's responsibility as well is conceded by Brada.

It is clear that the lease in this case was no sham. It was not an attempt to lease operating authority in the guise of a lease of equipment.

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[1] "Possibly subject to some qualifications, it may be stated that when a certificate or permit holder furnishes service in vehicles owned and operated by others, he must control the service, to the same extent as if he owned the vehicles, but need control the vehicles only to the extent necessary to be responsible to the shipper, the public and the Commission for the transportation." Ex Parte No. MC-43, 51 M.C.C. 461 lc 466.

Indemnity Invalid Where Lease Not Compliance With Regulations

The Seventh Circuit had decided a case involving an indemnity clause contained in a lease agreement of transportation equipment prior to its decision in our present case. In the case of *Alford v. Major* (7th Circ. 1972), 470 F.2d 132, the indemnity clause was also held invalid. From the opinion in that case, it appeared that the lessor retained control of the operation of the equipment contrary to the requirements of the I.C.C. regulations.

We do not defend a lease which, by its terms or in fact violates the provisions or the purpose of the Commission's regulations as appeared in the *Alford* case.

Indemnity Valid Where Lease Is Compliance With Regulations

In each of the cases previously cited in this Argument, *Carolina Freight Carriers, supra; Allstate, supra;* and *Jones Trucking Company, supra,* the courts were faced with leases of trucking equipment which complied with the letter and spirit of the I.C.C. regulations. In each of these cases the validity of an indemnity agreement was upheld and each of these courts distinguished the *Alford* case *supra,* because the Alford opinion demonstrated a failure to comply with the control requirements of the regulations.

The decision of the Fifth Circuit in the *Allstate* case states "* * * we find nothing in the language of 49 C.F.R. Section 1057.4 (a)(4) which would prohibit two freely contracting parties from determining, as between themselves, which party will ultimately bear the cost of damages done to a third person. The only conceivable argument against such an arrangement would be that the regulation seeks to prevent indemnification

on the theory that a trucking company, knowing it does not have to pay damages, might tend to be less careful in supervising and controlling the actions of its truck drivers. However, the same can be said of insurance coverage which the regulations obviously do not prohibit. We are of the opinion that had the I.C.C. intended to prevent indemnification between trucking companies it would have said so in precise terms." *Allstate v. Alterman,* 465 F.2d lc 713.

The Fourth Circuit in the *Carolina Freight Carriers* case stated "Nor do we find the indemnification provision violative of either the spirit or letter of the I.C.C. regulation." 492 F.2d lc 246.

Freedom of Contract

The same distinction of the *Alford* case has recently been made by Judge Austin of the United States District Court for the Northern District of Illinois, Eastern Division in *General Express, Inc. v. Schreiber Freight Lines, Inc.,* 377 F.Supp. 1159. In considering the rights of the parties to contract between themselves it was stated:

> "Any lingering doubt created by Schreiber's public policy argument is dispelled by the public policy of fostering freedom of contract. In *Baltimore and Ohio Southwestern Railway Company v. Voigt,* 176 U.S. 498, 20 S.Ct. 385, 44 L.Ed. 560 (1900), the court said it must not be forgotten that,
>
> > 'The right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts than to enable parties thereto to escape from their obligations on the pretext of public policy, unless it clearly appears

that they clearly (sic) contravene public right or public welfare.' "

General Express, Inc. v. Schreiber Freight Lines, Inc., 377 F.Supp. lc 1161.

The *General Express* Opinion also equates our present situation with that in the case of *Chicago, R.I. & P.R. Co. v. Chicago, B. & Q. R. Co.* (7th Circ. 1971), 437 F.2d 6, which was an action between two railroads on an indemnity agreement and where it was stated:

"The distribution of risks undertaken by this contract does not impair the policies or force of the Federal Safety Appliance Act * * * These provisions of the contract represented an adjustment of the private relations between the two carriers but did not alter their duties to the public as common carriers." 437 F.2d at 9-10.

The reference in the *General Express* case to the prior decision of this court in *Baltimore Ohio Southwestern Railway Company v. Voigt*, 176 U.S. 498 is equally appropriate in our present case. The right of the parties to freely contract between themselves as they see fit is not to be taken lightly. Contractual provisions should not be invalidated "* * * unless it *clearly appears* that they contravene public right or the public welfare." 176 U.S. lc 505. [Emphasis added]

Internalize Costs?

In its opinion in our present case, the Seventh Circuit has rejected the distinctions which have been made of the *Alford* case and holds that the indemnity provision itself is invalid regardless of other compliance with the regulations. The Seventh Circuit states that the I.C.C. regulations require the party who has the duty of responsibility and control to internalize the costs

of a breach of this duty.[2] There is no elaboration by the court as to how it reached this conclusion and we submit that this statement by the Court finds no basis in the regulations. The Seventh Circuit states that the insurance rates would reflect the level of care exercised. It is equally true that over a period of time, in a competitive market this would also be reflected in the rental rates for leased equipment. Additionally, we submit that a contractual adjustment of losses between the parties provides additional incentive for each party to be more conscious of safety. Also, as has been pointed out in other cases, the indemnity agreement provides added sources of funds to the public should damage occur.

Therefore, as stated, we find no basis in the regulations for the statement of the Seventh Circuit as to internalization of costs. We also find no factual basis for this statement.

History of Regulations

The history of the regulations involved in this case is set forth in *American Trucking Associations v. United States*, 344 U.S. 298 (1953), and in the reports of Ex Parte Number MC-43. See 51 M.C.C. 461; 52 M.C.C. 675; 64 M.C.C. 361; 68 M.C.C. 553. These reports show the lengthy extent to which the Commission explored the problems involved in leasing of equipment in the trucking industry. Comprehensive regulations were prepared in order to correct that which it was felt by the Commission needed correcting. It is significant that there is no language in these regulations prohibiting indemnity agreements in these equipment leases. It is also significant to note that these regulations were formulated and became effective more than twenty years ago. Although there have been some

[2] We assume that the breach of duty referred to by the court is the negligent tort committed against a third party rather than the duty of responsibility and control.

amendments and although there have been numerous incidences of cases before the courts throughout this period, the Commission has not seen fit to make any amendment or additions to the regulations in order to prohibit or limit indemnity agreements.

Interpretation of Regulations by Commission and United States

In the Memorandum for the United States and the Interstate Commerce Commission as Amici Curiae filed in this case the position of the Commission on this subject is clearly revealed. It is there stated, "If the lessee otherwise assumes full control and acknowledges its personal liability to the injured party, it is not forbidden to seek indemnity from the lessor. The goal underlying the regulations—the prevention of leases of operating authority in the guise of leases of equipment—is not affected by indemnification agreements where other adequate indicia of control and responsibility are present.

"The Commission believes, however, that an indemnity clause is a factor to be considered in determining whether a lessee has in fact assumed the requisite control and responsibility." (Memorandum point 3, pp. 5)

Thus we see that the opinions in the *Carolina Carriers, Allstate* and *Jones Trucking* cases *supra* are all in accord with the position taken by the Commission on the interpretation of its regulations. It is clear that the position taken by the Commission would uphold the validity of the indemnity agreement in our present case.

The interpretation by an administrative agency of its own regulations has constantly been accorded great deference by this Court. In *Bowles v. Seminole Rock & Sand Company*, 325

U.S. 410 (1945), Bowles, the administrator of the office of Price Administration, sued a company to enforce the agency's maximum price regulations. This Court stated:

> "Since this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation." 325 U.S. lc 413-414.

The same principle has recently been followed by the Second Circuit Court of Appeals in *Perine v. William Norton & Company, Inc.* (2nd Circ. 1974), 509 F.2d 114, where the court relied on an amicus brief filed by the Securities and Exchange Commission for interpretation of an SEC regulation. The *Bowles* case, *supra*, was authority for that decision.

It can also be seen from the Memorandum for the United States and the Interstate Commerce Commission as Amici Curiae filed in this case that the United States concurs in the belief that the regulations of the Interstate Commerce Commission do not prohibit an indemnity clause of the type under consideration in this case. (Memorandum p. 7).

Transamerican, the lessee in this case, has complied with the I.C.C. regulations, has appropriately assumed and exercised control and responsibility for the equipment, has carried out the safety requirements and has satisfied the liability to the injured third party. This being the case, there is nothing contained in the indemnity provisions of the lease which conflicts with the requirements or purpose of the Regulations and these provisions are a valid exercise of the rights of the parties to contract with each other.

CONCLUSION

For the reasons stated above, the decisions of the District Court and of the United States Court of Appeals for the Seventh Circuit granting summary jugdment to Brada should be reversed and this case should be remanded to the District Court for a trial on the issues stated in Transamerican's Amended Cross-Claim and Brada's Answer.

Respectfully submitted

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APPENDIX

APPENDIX

TRANSAMERICAN FREIGHT LINES, INC.
Detroit, Michigan

Lease Agreement With Authorized Carriers

THIS AGREEMENT, made and entered into this 19th day of January, A.D. 1968, by and between TRANSAMERICAN FREIGHT LINES, INC., a Delaware Corporation, hereafter referred to as the First Party lessee, and Brada Miller Freight Systems, Inc. whose address is 3120 Lonya Ave. of the City of Detroit, State of Michigan hereafter referred to as the Second Party, lessor.

WITNESSETH: WHEREAS, First and Second Parties are authorized carriers as that term is defined in the rules and regulations of the Interstate Commerce Commission pertaining to the lease and interchange of vehicles by motor carriers; and

WHEREAS, the Second Party is the owner or holds under a lease for more than thirty (30) days, certain motor vehicle equipment regularly used by it which it desires to lease to the First Party for its use as hereinafter specified.

NOW, THEREFORE, in consideration of the compensation to be paid by First Party to Second Party and their mutual promises, agreements and conditions herein contained, it is hereby agreed as shows:

1. The Second Party hereby leases to the First Party the following motor vehicle equipment to be operated by H. L. Hardrick, a driver who is duly authorized by the Second Party to execute this Agreement on its behalf, for the movement in interstate commerce for the duration of one (1) single trip be-

ginning at ..... A.M. as 1:00 P.M. on Jan. 19, 1968, of such freight which First Party shall turn over to Second Party and the Second Party agrees to transport such freight from the place or places where Second Party may receive the same in the City of Detroit, State of Michigan direct to without deviation from authorized routes of the First Party to its terminal in the City of Kansas City, State of Missouri which latter city Second Party represents is in the direction of a point which it is authorized to serve.

(Descriptive Material Omitted in Printing)

2. First Party agrees to pay Second Party and Second Party agrees to accept therefor the following compensation:

(Descriptive Material Omitted in Printing)

3. Second Party further agrees that it will bear the entire cost of operating said motor vehicle equipment, and that it will at all times keep said motor vehicle equipment in good mechanical condition, order and repair, and will cause said motor vehicle equipment to be operated only by a competent employee of the Second Party, in which event said employee of the Second Party shall be the representative of the Second Party in the premises. It is being expressly understood and agreed that nothing herein is to be construed as constituting Second Party, its agents, servants and employees, as the agent, servant, employee or representative of the First Party.

4. It is mutually understood and agreed, that the First Party during the term of this lease shall have the control and responsibility for the operation of said equipment in respect to the public, shippers and Interstate Commerce Commission for such period that said equipment is operated under the terms of this lease as provided in Paragraph 1 hereof.

5. Second Party further agrees that in the operation of said motor vehicle equipment it will comply with all the rules and

regulations of the Bureau of Motor Carriers of the Interstate Commerce Commission, and the applicable rules and regulations of any public utility commission and of any other similar state authority: that it will observe all pertinent rules and regulations governing the hours of service of its drivers of [*sic*] helpers, and all regulations, laws and ordinances of any government authority applying to the operation upon the public highways of said motor vehicle equipment, that it will pay any and all federal or state withholding taxes, assessments, unemployment insurance, old age insurance, or other social security payments that may become due by reason of the payment of wages or other earnings to the driver of said motor vechile [*sic*] equipment, or to any helper, or to any person or persons engaged in the carrying out of this Agreement upon the part of Second Party: and further agrees to meet all laws or regulations now or hereafter adopted or premulgated [*sic*] by legally constituted authorities in respect thereto.

6. It is mutually agreed that responsibility of First Party resulting from control and use of said equipment pursuant to Paragraph 4 shall in no way abrogate the rights of the First Party to demand set off and endemnity [*sic*] from the Second Party as set out in Paragraph 9 hereof.

7. It is further agreed that Second Party represents that its employee, agent or servant executing this agreement has full authority to act on its behalf and represents that said person is competent and qualified to perform the vehicle inspection required by the Interstate Commerce Commission regulations.

8. Second Party further agrees to procure and maintain at its own expense adequate fire, theft and collision insurance with respect to the aforesaid motor vehicle equipment and to indemnify and save the First Party harmless from any and all loss, damage or expense arising out of fire, theft, collision, accident or other casualty or event affecting such equipment. In

the event the Second Party or any driver designated by Second Party shall operate said motor vehicle equipment and during the operation thereof shall be pulling a trailer belonging to or leased by the First Party, and said trailer shall be damaged or lost because of the fault or negligence of the Second Party or the driver designated by said Second Party, the Second Party agrees to pay First Party for said loss or damage to said trailer. The Second Party further agrees to indemnify and to hold the First Party harmless from all loss and damage to property belonging to or leased by the First Party and from all losses and claims for damage to cargo that shall be occasioned or caused by the negligence or fault of the Second Party or the driver or operator of said equipment designated by the Second Party.

9. It is mutually understood and agreed by and between the parties hereto that First Party shall not be responsible to Second Party, its agents, servants and employees, for any negligence of the Second Party, its agents, servants or employees, or for any loss, damage, injury or expense arising out of the failure of Second Party to carry out the terms of this Agreement. Second Party hereby agrees to indemnify and save harmless First Party from any and all claims, suits, losses, fines or other expenses arising out of, based upon or incurred because of injury to any person or persons, or damage to property sustained or which may be alleged to have been sustained by reason of any negligence or alleged negligence on the part of Second Party, its agents, servants or employees, and for any loss or damage to cargo resulting form [*sic*] any negligence or unlawful act of Second Party, his agents, servants and employees. It is mutually understood and agreed that Second Party will defend, at his own expense and cost, any and all suits that may be brought against First Party for injuries sustained, including death resulting therefrom, or damage to property caused or alleged to have been caused by the negligence of any person employed by Second Party, while engaged in the performance of

any of the work required by the terms and conditions of this Agreement, and for any cargo loss sustained resulting from any negligence or unlawful act on the part of Second Party, his agents, servants and employees. Nothing in this Paragraph 9 contained shall be construed to in anywise limit the liability of the Party of the First Part to the public in connection with the use of said equipment under this Agreement.

10. It is mutually understood and agreed that upon the termination of this Agreement, the Second Party will forthwith remove from said motor vehicle equipment all plates, signs or other evidence of certificate numbers or permits belonging to First Party, and deliver the same to said First Party, together with any other property of First Party that may be then in the possession of Second Party, including collections and C.O.D. charges.

11. First Party has caused an inspection to be made of the aforesaid motor vehicle equipment, the results of which have been certified upon the report attached to a copy of this lease, which discloses that the same is equipped with all parts and accessories necessary for its safe operation in accordance with the Safety Regulations of the Interstate Commerce Commission.

12. The First Party, by signing this Agreement acknowledges receipt of the motor vehicle equipment specifically described in Paragraph 1 above on the date and at the time therein set forth.

In Witness Whereof, the parties hereto have caused this Agreement to be duly executed in quadruplicate on the date set forth below.

(Signatures Omitted in Printing)